

## CONTRACT FOR INSTALLATION AND SERVICES

THIS CONTRACT, number 295-02-11-B, entered into this 12<sup>th</sup> day of February, 2003, by and between Central Valley School District #356 hereinafter called the "Owner" and E-MAN Networks, hereinafter called the "Contractor".

### WITNESS

In consideration of the mutual covenants existing between the parties, and the further consideration specifically set forth herein, the parties agree as follows:

### ARTICLE I. STATEMENT OF WORK

The Contractor shall furnish materials, labor, equipment, and services and shall perform all work as described in the Specifications prepared by the Owner: WAN FIBER SERVICES: Adams, Keystone, and McDonald Elementary Schools Bid, Bid. 295-02-11-B.

### ARTICLE II. THE CONTRACT PRICE

The Owner shall pay or provide for payments on their behalf, the Contractor a lump sum in current funds of Seventy-Four Thousand Eight Hundred and Fifty-Seven Dollars and 18/100, \$74,857.18, for the installation on the Base Bid, plus Washington State sales tax, for the performance of the installation work called for under this contract. In addition, the Owner shall pay or provide for payments on their behalf, the Contractor a monthly sum in current funds of Three hundred and Seventy-Eight Dollars and 04/100, \$378.04 for each school, plus Washington State sales tax, for the monthly lease of fiber called for under this Contract for a period of ten (10) years from the date of acceptance of the installation of the fiber. An additional ten, one-year extensions to the contract may be extended by the District for a maximum total of twenty years at the same rate.

### ARTICLE III. TIME OF COMPLETION

The Contractor agrees that installation of fiber under this contract is desirable, exclusive of maintenance, on or before July 1, 2003. But, if the Contractor applies for all necessary permits immediately after the award of the bid (within seven calendar days) and proceeds with the work once the permits are approved, the Contractor will have 60 days from the approval date on the latest permit before a \$100.00 per day penalty is assessed and 75 days from the same date before a \$500.00 per day penalty is assessed for being late. Failure to apply for the permit within seven days will require a \$100.00 per day late penalty each day after the stated completion date on page four for the first fifteen days and \$500.00 per day thereafter.

The Contractor also agrees to provide leased fiber services for a period of ten (10) years from the date of acceptance of the installation and an additional ten (10), one-year extensions to the contract if extended by the District for a maximum total of twenty years.

#### ARTICLE IV. PAYMENT FOR WORK

From time-to-time, as the work progresses, the Contractor, upon submission of requisitions, shall receive progress payments not to exceed 95 percent of the total contract price, such payment to be made on the basis of completed work upon certification by the Owner. The 5 percent withheld shall constitute the final payment, which shall be made upon final approval by the Owner.

#### ARTICLE V. CONTRACT DOCUMENTS

The Contract Documents shall consist of the following component parts: this instrument and RFP packet 295-02-11-B. It is expressly agreed that this written instrument and the other documents set forth in this Article and attached hereto, and which are made a part hereof as fully as if they were set forth at length herein, embody the entire Contract between the parties; and, no verbal alternatives or variations shall be binding on the parties or create any obligations or liabilities not set forth or provided for herein.

#### ARTICLE VI. GENERAL CONDITIONS

##### I. Specifications and Related Data

###### A. Contract Documents

The Contract Documents shall include those enumerated in Article V above. The intent of the Contract Document is that the Contractor shall furnish all labor, materials, equipment, and services necessary for the completion of the proposed work. The Contract Documents shall be signed by the Owner and the Contractor, each shall retain a copy.

###### B. Approvals

All samples, shop drawings, or schedules required for approval shall be furnished by the Contractor as directed subject to approval by the Owner. The work shall be done in accordance with these approved items and the Owner's specifications.

###### C. Surveys, Permits, and Regulations

Unless otherwise specified, the Owner shall furnish all surveys at his/her expense. Permits, licenses, royalties, and lien fees necessary for the prosecution of the work shall be secured and paid for by the Contractor. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified to achieve proper conformity.

The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations concerning the construction of the project as specified. If the Contractor finds that the Specifications are at variance therewith, s/he shall immediately notify the Owner who shall promptly make such changes as are necessary.

## 2. Owner and Contractor Relationship

### A. Access to Work

It shall be the obligation of the Contractor to provide proper facilities to permit the Owner to observe the work during any stage of construction.

### B. Separate Contracts

The Owner reserves the right to let other contracts in connection with the work under this Contract. The Contractor shall provide reasonable access and opportunity for the other contractors to do their work and shall fit, connect, and coordinate his/her work with theirs so as not to cause them or him/her any undue delay or impediment to the prompt and proper performance and completion of the work by each.

### C. Owner's Right to do Work

The Owner, without prejudice to any other right or remedy s/he may have, shall have the right to prosecute the work in the event the Contractor fails to perform the work properly or fails to perform any provisions of the Contract. A prerequisite of such action by the Owner shall be fifteen (15) days written notice to the Contractor. The amount charged to the Contractor will be negotiated and may be deducted from payments then and thereafter due the Contractor.

### D. Owner's Right to Terminate Contract

The District requires the Contractor to prohibit any of its employees who have ever been convicted or plead guilty of any of the child-related felonies from working where s/he would have contact with public school children. Any failure to comply with this section (Washington State RCW 26A.400.330) shall be grounds for the District to immediately terminate the Contract.

Contractors handling District projects shall have a complete record check, including a fingerprint check through the Washington State Patrol and the Federal Bureau of Investigation, for any new employee who, in the course of the Contract, may "have regularly scheduled unsupervised access to children." Failure to comply shall be grounds for the District to immediately terminate the Contract.



Before final payment is made, the Contractor shall furnish the Owner with a full release of liens signed by all sub-contractors and material persons associated in any way with the work.

These liens shall be accompanied by a notarized affidavit (sworn statement) to the effect that all claims of any character pertaining to the performance of the Contract, including sub-contractors, material supplies, and labor have been paid in full and that the acceptance of final payment is acknowledged as a release of the Owner from any and all claims arising under or by virtue of the Contract.

### 3. Insurance and Protection

The Contractor shall secure and maintain Public Liability, Bodily Injury (including death), and Property Damage insurance coverage, in the amount required by law, protecting him/her from claims under Workmen's Compensation and Employer's Liability which may arise in the course of carrying out the work under this Contract. Certificates of such insurance shall be filed with the Owner before commencing any of the work under this Contract.

The Contractor shall adequately protect the work, adjacent property, and public and shall be responsible for any damage or injury due to his/her act or neglect. The Contractor shall save harmless the Owner from and against any and all losses and/or claims brought or recovered against the Contractor or his/her sub-contractors by reason of any error, omission, or act of the Contractor, his/her agents, or employees in the execution of the work or the guarding of it.

The Owner may, at his/her own expense, obtain such insurance as will protect him/her from possible contingent liability to others for damages because of bodily injury or death, which may arise from operations under the Contract, and any other liability for damages which the Contractor is required to insure against under provision of the Contract.

### 4. Progress and Completion of the Work

#### A. Schedule of Completion

Following the execution of the Contract by the Owner, the Contractor shall begin work immediately, unless otherwise notified in writing, and shall prosecute the work regularly and without interruption, weather permitting, so as to complete the work within the time stated.

#### B. Changes in the Work

If, and as the need arises, the Owner may order, in writing, changes and/or extra work without invalidating the Contract. At the time ordering such changes, additions, deletions, or modifications, the amount or method of compensation and any adjustments in the time of completion shall be determined and stipulated in writing.

C. Clean-up

The Contractor shall at all times keep the premises and public streets free from the accumulation of waste material or rubbish caused by his/her employees or work; and, at the completion of the work, s/he shall remove all his/her waste and excess material, rubbish, and equipment so as to leave the work and the premises neat and clean and ready for the purpose for which they were intended.

5. Payments

A. Method of Payment

Payments shall be made in accordance with Article IV of the Contract. The payment of the final amount owing the Contractor shall constitute a waiver of all claims by the Owner except:

- 1) Claims arising from failure to comply with the plans and specifications.
- 2) Claims arising from faulty work or materials appearing after substantial completion.
- 3) Claims arising by virtue of any special guarantee specified in the Contract.
- 4) Claims of the Owner previously made against the Contractor, but as yet unsettled.

The acceptance of the final payment by the Contractor shall constitute a waiver of all claims by the Contractor except claims previously made by the Contractor, but as yet unsettled.

B. Payment Withheld



Any part of the whole of any payment may be withheld by the Owner to the extent s/he deems necessary and reasonable for protection should the Owner discover evidence of:

- 1) Defective work not corrected.
- 2) Claims filed against the Contractor.

- 3) Reasonable evidence indicating probable filing of claims against the Contractor.
- 4) Failure of the Contractor to make proper payments to sub-contractors or for material or for labor.
- 5) A reasonable doubt that the Contract can be completed from the then unpaid balance.
- 6) Unsatisfied damage to another Contractor.
- 7) Unsatisfactory progress of the work by the Contractor.

When the above grounds are removed, the amount withheld because of them shall be paid to the Contractor, subject to and within the other terms of the Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and the year first above written.

CENTRAL VALLEY SCHOOL DISTRICT, #356	
WITNESS	OWNER
	
DARREN KING, PURCHASING AGENT	JANICE R. HUTTON, DIRECTOR OF BUSINESS SERVICES

CONTRACTOR

EDMUND JACOBS, BOARD MEMBER, E-MAN NETWORKS